

ATTACHMENT 5 – TEMPLATE STANDARD AGREEMENT FORM (WITH APPENDICES)

1. Agency Contract Number	2. Solicitation Number	3. Financial Coding	4. Agency Assigned Encumbrance Number
5. Vendor Number	6. Project/Case Number		7. Alaska Business License Number
This contract is between the State of Alaska,			
8. Department of Health and Social Services		Division	hereafter the State, and
9. Contractor			hereafter the Contractor
Mailing Address	Street or P.O. Box	City	State ZIP+4
<p>10.</p> <p>ARTICLE 1. Appendices: Appendices referred to in this contract and attached to it are considered part of it.</p> <p>ARTICLE 2. Performance of Service:</p> <p>2.1 Appendix A (General Provisions), Articles 1 through 16, governs the performance of services under this contract</p> <p>2.2 Appendix B (Indemnity and Insurance) sets forth the liability and insurance provisions of this contract</p> <p>2.3 Appendix C (Description of Services) sets forth the services to be performed by the Contractor</p> <p>2.4 Appendix D (Payment for Services) sets forth the provision for payment</p> <p>2.5 Appendix E (Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Business Associate Agreement) governs the use of Protected Health Information under this contract</p> <p>ARTICLE 3. Period of Performance: The period of performance for this contract begins _____ and ends on _____</p> <p>ARTICLE 4. Considerations:</p> <p>4.1 In full consideration of the Contractor's performance under this contract, the State shall pay the Contractor a sum not to exceed <u>\$0,000.00</u> in accordance with the provisions of Appendix D.</p>			
11. Department of Health and Social Services		Attention: Contracts Support Team	
Mailing Address P.O. Box 110650, Juneau, Alaska 99811-0650		Attention: Contracts Section	
12. CONTRACTOR		14. CERTIFICATION	
Name of Firm		I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alterations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the verity, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.	
Signature of Authorized Representative	Date		
Typed or Printed Name of Authorized Representative			
Title			
13. CONTRACTING AGENCY		Signature of Head of Contracting Agency or Designee	
Department/Division Health & Social Services /		Date	
Signature of Project Director	Date	Typed or Printed Name	
Typed or Printed Name of Project Director		Title	
Title			

02-93 (Rev. 04-14)

NOTICE: This contract has no effect until signed by the head of contracting agency or designee.

Appendix A General Provisions

Article 1. Definitions.

- 1.1 In this contract and appendices, "Project Director" or "Agency Head" or "Procurement Officer" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
- 1.2 "State Contracting Agency" means the department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.

Article 2. Inspections and Reports.

- 2.1 The department may inspect, in the manner and at reasonable times it considers appropriate, all the contractor's facilities and activities under this contract.
- 2.2 The contractor shall make progress and other reports in the manner and at the times the department reasonably requires.

Article 3. Disputes.

- 3.1 If the contractor has a claim arising in connection with the contract that it cannot resolve with the State by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620 – 632.

Article 4. Equal Employment Opportunity.

- 4.1 The contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to deal with the problem of unlawful discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.
- 4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.
- 4.7 Failure to perform under this article constitutes a material breach of contract.

Article 5. Termination.

The Project Director, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the State. In the absence of a breach of contract by the contractor, the State is liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

Article 6. No Assignment or Delegation.

The contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Project Director and the Agency Head.

Article 7. No Additional Work or Material.

No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

Article 8. Independent Contractor.

The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

Article 9. Payment of Taxes.

As a condition of performance of this contract, the contractor shall pay all federal, State, and local taxes incurred by the contractor and shall require their payment by any Subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

Article 10. Ownership of Documents.

All designs, drawings, specifications, notes, artwork, and other work developed in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the contractor. The contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. Nevertheless, if the contractor does mark such documents with a statement suggesting they are trademarked, copyrighted, or otherwise protected against the State's unencumbered use or distribution, the contractor agrees that this paragraph supersedes any such statement and renders it void. The contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the contractor may retain copies of all the materials.

Article 11. Governing Law; Forum Selection

This contract is governed by the laws of the State of Alaska. To the extent not otherwise governed by Article 3 of this Appendix, any claim concerning this contract shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

Article 12. Conflicting Provisions.

Unless specifically amended and approved by the Department of Law, the terms of this contract supersede any provisions the contractor may seek to add. The contractor may not add additional or different terms to this contract; AS 45.02.207(b)(1). The contractor specifically acknowledges and agrees that, among other things, provisions in any documents it seeks to append hereto that purport to (1) waive the State of Alaska's sovereign immunity, (2) impose indemnification obligations on the State of Alaska, or (3) limit liability of the contractor for acts of contractor negligence, are expressly superseded by this contract and are void.

Article 13. Officials Not to Benefit.

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

Article 14. Covenant Against Contingent Fees.

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except employees or agencies maintained by the contractor for the purpose of securing business. For the breach or violation of this warranty, the State may terminate this contract without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, brokerage or contingent fee.

Article 15. Compliance.

In the performance of this contract, the contractor must comply with all applicable federal, state, and borough regulations, codes, and laws, and be liable for all required insurance, licenses, permits and bonds.

Article 16. Force Majeure:

The parties to this contract are not liable for the consequences of any failure to perform, or default in performing, any of their obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party. For the purposes of this Agreement, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

Appendix B²

Indemnity and Insurance

Article 1. Indemnification

The Contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the Contractor under this agreement. The Contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of the Contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "Contracting agency", as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Contracting agency's selection, administration, monitoring, or controlling of the Contractor and in approving or accepting the Contractor's work.

Article 2. Insurance

Without limiting contractor's indemnification, it is agreed that contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the contracting officer prior to beginning work and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the contractor's services. All insurance policies shall comply with and be issued by insurers licensed to transact the business of insurance under AS 21.

2.1 Workers' Compensation Insurance: The Contractor will provide a letter stating that they work independently; therefore have no need to carry Workers Compensation coverage.

2.2 Commercial General Liability Insurance: covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per claim.

2.3 Commercial Automobile Liability Insurance: covering all vehicles used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per claim.

2.4 Professional Liability Insurance: covering all errors, omissions or negligent acts in the performance of professional services under this agreement.
Limits required per the following schedule:

Contract Amount	Minimum Required Limits
Under \$100,000	\$ 300,000 per Claim / Annual Aggregate
\$ 100,000 - \$499,999	\$ 500,000 per Claim / Annual Aggregate
\$ 500,000 - \$999,999	\$1,000,000 per Claim / Annual Aggregate
\$ 1,000,000 or over	Refer to Risk Management

Appendix C

Description of Services

Should there be a conflict among documents. The following order of precedence shall govern the resolution of conflicts:

First, this contract document,

Second, the RFP,

Third, the proposal.

Appendix D

Payment for Services

Payment for services provided under this contract shall not exceed **\$0,000.00** for the period of performance of this contract.

The Contractor will submit detailed invoice(s) for services performed in accordance with Appendix C.

The State will pay all invoices within thirty (30) days of invoice approval by the Project Director.

Each invoice must:

- reference the Contractor's name, address and phone number;
- reference the contract number;
- include an invoice number;
- itemize the contractual services provided during the period invoiced as described in Appendix C.

The Contractor shall submit invoices to the email address specified below no later than 30 days after the end of each month for which services were performed. Failure to include the required information on the invoice may cause an unavoidable delay to the payment process.

Email invoices to:

hss.fms.contracts.invoicing@alaska.gov

(please reference the contract number in the subject line)

Notwithstanding any other provision of this contract, it is understood and agreed that the State shall withhold payment at any time the Contractor fails to perform work as required under Appendix C and/or D of this contract.

Appendix E
State of Alaska, Department of Health & Social Services
Health Insurance Portability and Accountability Act of 1996 (HIPAA)
Business Associate Agreement

This HIPAA Business Associate Agreement is between the State of Alaska, Department of Health and Social Services ("Covered Entity" or "CE") and **Insert Vendor Name here** ("Business Associate" or "BA").

RECITALS

Whereas,

- A. CE wishes to disclose certain information to BA, some of which may constitute Protected Health Information ("PHI");
- B. It is the goal of CE and BA to protect the privacy and provide for the security of PHI owned by CE that is disclosed to BA or accessed, received, stored, maintained, modified or retained by BA in compliance with HIPAA (42 U.S.C. 1320d – 3120d-8) and its implementing regulations at 45 C.F.R. 160 and 45 C.F.R. 164 (the "Privacy and Security Rule"), the Health Information Technology for Economic and Clinical Health Act of 2009 (P.L. 111-5) (the "HITECH Act"), and with other applicable laws;
- C. The purpose and goal of the HIPAA Business Associate Agreement ("BAA") is to satisfy certain standards and requirements of HIPAA, HITECH Act, and the Privacy and Security Rule, including but not limited to 45 C.F.R. 164.502(e) and 45 C.F.R. 164.504(e), as may be amended from time to time;
- D. CE may operate a drug and alcohol treatment program that must comply with the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 U.S.C. 290dd-2 and 42 C.F.R. Part 2 (collectively "Part 2"); and
- E. BA may be a Qualified Service Organization ("QSO") under Part 2 and therefore must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information.

Therefore, in consideration of mutual promises below and the exchange of information pursuant to the BAA, CE and BA agree as follows:

- 1. Definitions.
 - a. General: As used in this BAA, the terms "Protected Health Information," "Health Care Operations," and other capitalized terms have the same meaning given to those terms by HIPAA, the HITECH Act and the Privacy and Security Rule. In the event of any conflict between the mandatory provisions of HIPAA, the HITECH Act or the Privacy and Security Rule, and the provisions of this BAA, HIPAA, the HITECH Act or the Privacy and Security Rule shall control. Where the provisions of this BAA differ from those mandated by HIPAA, the HITECH Act or the Privacy and Security Rule but are nonetheless permitted by HIPAA, the HITECH Act or the Privacy and Security Rule, the provisions of the BAA shall control.
 - b. Specific:
 - 1) Business Associate: "Business Associate" or "BA" shall generally have the same meaning as the term "business associate" at 45 C.F.R. 160.103.
 - 2) Covered Entity: "Covered Entity" or "CE" shall have the same meaning as the term "covered entity" at 45 C.F.R. 160.103.
 - 3) Privacy and Security Rule: "Privacy and Security Rule" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- 2. Permitted Uses and Disclosures by Business Associate.

- a. BA may only use or disclose PHI for the following purposes:
- b. BA may use or disclose PHI as required by law.
- c. BA agrees to make uses and disclosures and requests for PHI consistent with CE's minimum necessary policies and procedures.
- d. BA may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by CE, except for the specific uses and disclosures set out below.
- e. BA may disclose PHI for the proper management and administration of BA or to carry out the legal responsibilities of BA, provided the disclosures are required by law, or BA obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notified BA of any instances of which it is aware in which the confidentiality of the information has been breached.
- f. BA may provide data aggregation services related to the health care operations of CE.

3. Obligations of Business Associate.

- a. Permitted uses and disclosures: BA may only use and disclose PHI owned by the CE that it creates, receives, maintains, or transmits if the use or disclosure is in compliance with each applicable requirement of 45 C.F.R. 164.504(e) of the Privacy Rule or this BAA. The additional requirements of Subtitle D of the HITECH Act contained in Public Law 111-5 that relate to privacy and that are made applicable with respect to Covered Entities shall also be applicable to BA and are incorporated into this BAA.

To the extent that BA discloses CE's PHI to a subcontractor, BA must obtain, prior to making any such disclosure: (1) reasonable assurances from the subcontractor that it will agree to the same restrictions, conditions, and requirements that apply to the BA with respect to such information; and (2) an agreement from the subcontractor to notify BA of any Breach of confidentiality, or security incident, within two business days of when it becomes aware of such Breach or incident.

- b. Safeguards: 45 C.F.R. 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies, procedures and documentation requirements) shall apply to BA in the same manner that such sections apply to CE, and shall be implemented in accordance with HIPAA, the HITECH Act, and the Privacy and Security Rule. The additional requirements of Title XIII of the HITECH Act contained in Public Law 111-5 that relate to security and that are made applicable to Covered Entities shall also apply to BA and are incorporated into this BAA.

Unless CE agrees in writing that this requirement is infeasible with respect to certain data, BA shall secure all paper and electronic PHI by encryption or destruction such that the PHI is rendered unusable, unreadable or indecipherable to unauthorized individuals; or secure paper, film and electronic PHI in a manner that is consistent with guidance issued by the Secretary of the United States Department of Health and Human Services specifying the technologies and methodologies that render PHI unusable, unreadable or indecipherable to unauthorized individuals, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by Section 13101 of the HITECH Act contained in Public Law 111-5.

BA shall not use personally owned devices to create, receive, maintain or transmit PHI. Devices the BA uses to create, receive, maintain or transmit CE's electronic PHI shall be owned and managed by BA or CE.

BA shall patch its operating system and all applications within two weeks of the release of any patch. BA shall keep its antivirus and antimalware installed and active. BA shall limit its use of administrative accounts for IT operations only.

- c. Reporting Unauthorized Disclosures and Breaches: During the term of this BAA, BA shall notify CE within 24 hours of discovering a Breach of security; intrusion; or unauthorized acquisition, access, use or disclosure of CE's PHI in violation of any applicable federal or state law, including security incidents.
BA shall identify for the CE the individuals whose unsecured PHI has been, or is reasonably believed to have been, Breached so that CE can comply with any notification requirements if necessary. BA shall also indicate whether the PHI subject to the Breach; intrusion; or unauthorized acquisition, access, use or disclosure was encrypted or destroyed at the time. BA shall take prompt corrective action to cure any deficiencies that result in Breaches of security; intrusion; or unauthorized acquisition, access, use, and disclosure. BA shall fulfill all breach notice requirements unless CE notifies BA that CE will take over the notice requirements. BA shall reimburse CE for all costs incurred by CE that are associated with any mitigation, investigation and notice of Breach CE undertakes or provides under HIPAA, HITECH Act, and the Privacy and Security Rule as a result of a Breach of CE's PHI caused by BA or BA's subcontractor or agent.

If the unauthorized acquisition, access, use or disclosure of CE's PHI involves only Secured PHI, BA shall notify CE within 10 days of discovering the Breach but is not required to notify CE of the names of the individuals affected.
- d. BA is not an agent of CE.
- e. BA's Agents: If BA uses a subcontractor or agent to provide services under this BAA, and the subcontractor or agent creates, receives, maintains, or transmits CE's PHI, the subcontractor or agent shall sign an agreement with BA containing substantially the same provisions as this BAA and further identifying CE as a third-party beneficiary with rights of enforcement and indemnification from the subcontractor or agent in the event of any violation of the subcontractor or agent agreement. BA shall mitigate the effects of any violation of that agreement.
- f. Availability of Information to CE: Within 15 days after the date of a written request by CE, BA shall provide any information necessary to fulfill CE's obligations to provide access to PHI under HIPAA, the HITECH Act, or the Privacy and Security Rule.
- g. Accountability of Disclosures: If BA is required by HIPAA, the HITECH Act, or the Privacy or Security Rule to document a disclosure of PHI, BA shall make that documentation. If CE is required to document a disclosure of PHI made by BA, BA shall assist CE in documenting disclosures of PHI made by BA so that CE may respond to a request for an accounting in accordance with HIPAA, the HITECH Act, and the Privacy and Security Rule. Accounting records shall include the date of the disclosure, the name and if known, the address of the recipient of the PHI, the name of the individual who is subject of the PHI, a brief description of the PHI disclosed and the purpose of the disclosure. Within 15 days of a written request by CE, BA shall make the accounting record available to CE.
- h. Amendment of PHI: Within 30 days of a written request by CE or an individual, BA shall amend PHI maintained, transmitted, created or received by BA on behalf of CE as directed by CE or the individual when required by HIPAA, the HITECH Act or the Privacy and Security Rule, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. 164.526.
- i. Internal Practices: BA shall make its internal practices, books and records relating to the use and disclosure of CE's PHI available to CE and all appropriate federal agencies to determine CE's and BA's compliance with HIPAA, the HITECH Act and the Privacy and Security Rule.

- j. Risk Assessment: BA shall biennially conduct a thorough assessment of the potential risks to and vulnerabilities of the confidentiality, integrity, and availability of CE's PHI that BA receives, stores, transmits, or has access to. BA shall provide CE, upon request, with a written report detailing the results of the risk assessment within 5 days.
- k. To the extent BA is to carry out one or more of CE's obligations under Subpart E of 45 C.F.R. Part 164, BA must comply with the requirements of that Subpart that apply to CE in the performance of such obligations.
- l. Audits, Inspection and Enforcement: CE may, after providing reasonable notice to the BA, conduct an inspection of the facilities, systems, books, logs and records of BA that relate to BA's use of CE's PHI, including inspecting logs showing the creation, modification, viewing, and deleting of PHI at BA's level. Failure by CE to inspect does not waive any rights of the CE or relieve BA of its responsibility to comply with this BAA. CE's failure to detect or failure to require remediation does not constitute acceptance of any practice or waive any rights of CE to enforce this BAA.

Notwithstanding BA's obligation to report under paragraph 3.c of this BAA, BA shall provide a monthly report to CE detailing the unauthorized, or reasonable belief of unauthorized, acquisition, access, use, or disclosure of CE's PHI, including any unauthorized creation, modification, or destruction of PHI and unauthorized login attempts. BA shall include privileged and nonprivileged accounts in its audit and report, indicating the unique individual using the privileged account. BA shall also indicate whether CE's PHI subject to unauthorized activity was encrypted or destroyed at the time of the unauthorized activity.

BA shall provide a yearly report to CE that lists the names of all individuals with technical or physical access to CE's PHI and the scope of that access.

- m. Restrictions and Confidential Communications: Within 10 business days of notice by CE of a restriction upon use or disclosure or request for confidential communications pursuant to 45 C.F.R.164.522, BA shall restrict the use or disclosure of an individual's PHI. BA may not respond directly to an individual's request to restrict the use or disclosure of PHI or to send all communication of PHI to an alternate address. BA shall refer such requests to the CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to the BA.
 - n. Indemnification: BA shall indemnify and hold harmless CE for any civil or criminal monetary penalty or fine imposed on CE for acts or omissions in violation of HIPAA, the HITECH Act, or the Privacy or Security Rule that are committed by BA, a member of its workforce, its agent, or its subcontractor.
4. Obligations of CE. CE will be responsible for using legally appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to BA under the BAA until the PHI is received by BA. CE will not request BA to use or disclose PHI in any manner that would not be permissible under HIPAA, the HITECH Act or the Privacy and Security Rule if done by CE.
5. Termination.
- a. Breach: A breach of a material term of the BAA by BA that is not cured within a reasonable period of time will provide grounds for the immediate termination of the contract.
 - b. Reasonable Steps to Cure: In accordance with 45 C.F.R. 164.504(e)(1)(ii), CE and BA agree that, if it knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligation under the BAA, the nonbreaching party will take reasonable steps to get the breaching party to cure the breach or end the violation and, if the steps taken are unsuccessful, terminate the BAA if feasible, and if not feasible, report the problem to the Secretary of the U.S. Department of Health and Human Services.

- c. Effect of Termination: Upon termination of the contract, BA will, at the direction of the CE, either return or destroy all PHI received from CE or created, maintained, or transmitted on CE's behalf by BA in any form. Unless otherwise directed, BA is prohibited from retaining any copies of PHI received from CE or created, maintained, or transmitted by BA on behalf of CE. If destruction or return of PHI is not feasible, BA must continue to extend the protections of this BAA to PHI and limit the further use and disclosure of the PHI. The obligations in this BAA shall continue until all of the PHI provided by CE to BA is either destroyed or returned to CE.
6. Amendment. The parties acknowledge that state and federal laws relating to electronic data security and privacy are evolving, and that the parties may be required to further amend this BAA to ensure compliance with applicable changes in law. Upon receipt of a notification from CE that an applicable change in law affecting this BAA has occurred, BA will promptly agree to enter into negotiations with CE to amend this BAA to ensure compliance with changes in law.
7. Ownership of PHI. For purposes of this BAA, CE owns the data that contains the PHI it transmits to BA or that BA receives, creates, maintains or transmits on behalf of CE.
8. Litigation Assistance. Except when it would constitute a direct conflict of interest for BA, BA will make itself available to assist CE in any administrative or judicial proceeding by testifying as witness as to an alleged violation of HIPAA, the HITECH Act, the Privacy or Security Rule, or other law relating to security or privacy.
9. Regulatory References. Any reference in this BAA to federal or state law means the section that is in effect or as amended.
10. Interpretation. This BAA shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy and Security Rule and applicable state and federal laws. The parties agree that any ambiguity in BAA will be resolved in favor of a meaning that permits the CE to comply with and be consistent with HIPAA, the HITECH Act, and the Privacy and Security Rule. The parties further agree that where this BAA conflicts with a contemporaneously executed confidentiality agreement between the parties, this BAA controls.
11. No Private Right of Action Created. This BAA does not create any right of action or benefits for individuals whose PHI is disclosed in violation of HIPAA, the HITECH Act, the Privacy and Security Rule or other law relating to security or privacy.
12. Privacy and Security Point of Contact. All communications occurring because of this BAA shall be sent to HSS-Security@alaska.gov in addition to the CE.

In witness thereof, the parties hereto have duly executed this BAA as of the effective date.

Appendix F
State of Alaska, Department of Health & Social Services
And
{Entity}

NONDISCLOSURE AGREEMENT

This Agreement is made and entered into on this ____ day of _____, _____. This will hereinafter be referred to as the **'Effective Date'**.

This Agreement is between:

State of Alaska – Department of Health and Social Services

AND

These entities shall hereinafter be referred to individually as the **'Party'** and collectively as the **'Parties' Agree as follows:**

1. Definitions:

In this Agreement the following terms shall, unless the context otherwise requires, have the following meanings:

- 1.1. 'Disclosing Party'** means the Party disclosing Confidential Information to the other Party under this Agreement.
- 1.2. 'Receiving Party'** means the Party receiving Confidential Information from the other Party under this Agreement.
- 1.3. 'Confidential Information'** means any information, which shall include but is not limited to, network drawings, know-how, processes, product specifications, or business or financial affairs of the Parties or their customers, any other information security or compliance information, disclosed directly or indirectly and in any form whatsoever (including, but not limited to, disclosure made in writing, oral or in the form of

samples, models, computer programs, drawings or other instruments), and any information protected under state or federal law, furnished by the Disclosing Party to the Receiving Party under this Agreement.

1.3.1. Such Confidential Information shall also include, but shall not be limited to:

- 1.3.1.1.** Information disclosed by the Disclosing Party in writing marked as confidential at the time of disclosure;
- 1.3.1.2.** Information disclosed by the Disclosing Party orally, which is slated to be confidential at the time of disclosure;
- 1.3.1.3.** Information the Receiving Party obtains as part of the work they conduct on behalf of the Disclosing Party;
- 1.3.1.4.** Information disclosed in any other manner is designated in writing as Confidential Information at the time of disclosure; or
- 1.3.1.5.** Notwithstanding sub-clauses 1.3.1.1, 1.3.1.2, 1.3.1.3, and 1.3.1.4 of this definition, any information whose nature makes it obvious that it is confidential.

1.3.2. Such Confidential Information shall not include any information which:

- 1.3.2.1.** is, at the time of disclosure, publicly known; or
- 1.3.2.2.** becomes at a later date, publicly available, other than through a wrongful act, negligence, or a breach of this Agreement of or by the Receiving Party; or
- 1.3.2.3.** the Receiving Party can demonstrate by its written records was in its possession, or known to the Receiving Party, before receipt under this Agreement, and which was not previously acquired under an obligation of confidentiality; or
- 1.3.2.4.** is legitimately obtained at any time by the Receiving Party from a third party without restrictions in respect of disclosure or use; or
- 1.3.2.5.** the Receiving Party can demonstrate to the satisfaction of the Disclosing Party, has been developed independently of its obligations under this Agreement and without access to the Confidential Information.

1.4. 'Purpose' means the evaluations, discussions, negotiations and execution necessary to evaluate a potential contractual relationship between the Parties in respect of the Project defined in paragraph (i) of the Background section.

1.5. 'Affiliate' means any legal entity, including subcontractors, which, at the time of disclosure to it on any Confidential Information, is directly or indirectly controlling, controlled by or under common control with any of the Parties.

1.6. 'Contemplated Agreement' means any future legally binding Agreement between the Parties in respect of the Project envisaged under this Agreement.

2. Nondisclosure of Confidential Information:

2.1. In consideration of the disclosure of Confidential Information by the Disclosing Party to the Receiving Party solely for the Purpose, the Receiving Party undertakes, whether by itself or its successors and heirs, not to disclose Confidential Information to any third party, unless in accordance with Clause 4.

2.2. In addition to the undertaking in Clause 2.1, the Receiving Party shall be fully liable for:

- 2.2.1.** loss, theft or other inadvertent disclosure of Confidential Information; breach of this Agreement; and Clause 2.2.3 and
- 2.2.2.** any unauthorized disclosure of Confidential Information by persons (including, but not limited to, present and former employees) or entities to whom the Receiving Party under this Agreement has the right to disclose Confidential Information; and upon becoming aware of such inadvertent or unauthorized disclosure the Receiving Party has promptly notified the Disclosing

Party thereof and taken all reasonable measures to mitigate the effects of such disclosure and to prevent further disclosure.

2.3. The Receiving Party understands and agrees that:

2.3.1. any information known only to a few people to whom it might be of commercial interest and not generally known to the public is not public knowledge;

2.3.2. a combination of two or more parts of the Confidential Information is not public knowledge merely because each part is separately available to the public.

2.4. The Receiving Party acknowledges the technical, commercial and strategic value of the Confidential Information to the Disclosing Party and understands that unauthorized disclosure of such Confidential Information will be injurious to the Disclosing Party.

3. Use of Confidential Information:

The Receiving Party is entitled to use the Confidential Information, but only for the Purpose.

4. Permitted Disclosure of Confidential Information:

4.1. The Receiving Party may disclose in confidence Confidential Information to any of its Affiliates and employees, in which event the Affiliate and the employee shall be entitled to use the Confidential Information, but only to the same extent the Receiving Party is permitted to do so under this Agreement. The Receiving Party agrees that such Affiliates or employees are subject to confidentiality obligations no less restrictive than those of this Agreement.

4.2. The Receiving Party shall limit the dissemination of Confidential Information to its Affiliates and employees having a need to receive such information to carry out the Purpose.

4.3. The Receiving Party may disclose Confidential Information to its consultants, contractors, subcontractors, agents or similar persons and entities having a need to receive such information to carry out the Purpose on the prior written consent of the Disclosing Party. In the event that the Disclosing Party gives such consents, the Receiving Party agrees that it will require such individuals to agree to confidentiality obligations no less restrictive than those of this Agreement.

4.4. Notwithstanding Clause 2.1, the Receiving Party shall not be prevented from disclosing Confidential Information, where (i) such disclosure is in response to a valid order of a court or administrative tribunal having jurisdiction over this Agreement or (ii) such disclosure is otherwise required by law, provided that the Receiving Party, to the extent possible, has first given prior written notice to the Disclosing Party and made reasonable efforts to protect the Confidential Information in connection with such disclosure or cooperate with the Disclosing Party's efforts, if any, to protect the Confidential Information at issue.

5. Required Disclosure.

5.1. If the Recipient or a Representative is required by a federal or state law, including a court or administrative order, to disclose any Confidential Information, the Recipient or Representative shall immediately provide the Discloser with written notice of such requirement—unless doing so would violate any such law—so that the Discloser may seek a protective order or other appropriate remedy or waive compliance with any provisions of this Agreement.

5.2. If the Recipient or a Representative is required by a federal or state law, including a court or administrative order, to disclose Confidential Information, it must undertake the following: (a) notify the authority compelling the disclosure that the subject information is protected and of this Agreement; (b) cooperate with the Discloser in making the disclosure; (c) only disclose that Confidential Information

that it is required to disclose under federal or state law; and (d) to the fullest extent reasonable (e.g., by seeking a protective order), seek to ensure that any further disclosures of the subject Confidential Information are as limited as possible under federal and state law.

6. Copying and Return of Furnished Instruments:

- 6.1.** The Receiving Party shall not be entitled to copy samples, models, computer programs, drawings, documents or other instruments furnished by the Disclosing Party hereunder and containing Confidential Information, unless and to the extent it is necessary for the Purpose.
- 6.2.** All samples, models, computer programs, drawings, documents and other instruments furnished hereunder and containing Confidential Information shall remain the Disclosing Party's property.
- 6.3.** At any time upon request from the Disclosing Party or upon the conclusion of the Purpose or expiry of this Agreement, the Receiving Party, at its own cost, will return or procure the return, promptly and in any event within 14 days of receipt of such request, of each and every copy of Confidential Information given by the Disclosing Party, and satisfy the Disclosing Party that it no longer holds any further Confidential Information.

7. Nondisclosure of Negotiations:

Except as provided in Clause 4, each Party agrees that it will not, without the other Party's prior written approval, disclose to any third party the fact that the Parties are discussing the Project. The Parties acknowledge that the provisions of this Agreement shall apply in respect of the content of any such discussions. The undertaking set forth in this Clause 7 shall survive the termination of this Agreement.

8. Term and Termination:

- 8.1.** Agreement shall become effective on the Effective Date. The provisions of this Agreement shall however, apply retroactively to any Confidential Information, which may have been disclosed in connection with discussions and negotiations regarding the Project prior to the Effective Date.
- 8.2.** This Agreement shall remain in force for five (5) years from the Effective Date, except to the extent this Agreement is superseded by stipulations of the Contemplated Agreement.
- 8.3.** The rights and obligations of each Party with respect to all Confidential Information of the other Party that is received under this Agreement shall remain in effect for a period of five (5) years from the date of disclosure of Confidential Information.

9. Destruction:

Upon the request of the Disclosing Party for any reason, and within 10 days, the Receiving Party agrees to destroy the Confidential Information, and all materials derived from or relating thereto, disclosed to the Receiving Party (or derived from materials disclosed to the Receiving Party) by the Disclosing Party and agrees to provide to the Disclosing Party a written confirmation of such destruction; provided, that the Receiving Party and Receiving Party's representatives may retain Confidential Information for their files as required by their respective record retention policies, professional standards or to comply with legal and/or regulatory requirements. Receiving Party agrees that at the end of any such retention period or legal requirement, it agrees to destroy the Confidential Information.

10. Intellectual Property Rights:

All Confidential Information disclosed herein shall remain the sole property of the Disclosing Party and the Receiving Party shall obtain no right thereto of any kind by reason of this Agreement.

11. Future Agreements:

Nothing in this Agreement shall obligate either Party to enter into any further Agreements.

12. Definitive Agreement:

The Parties understand and agree that no contract or agreement providing for any relationship related to the Project shall be deemed to exist between the Disclosing Party and the Receiving Party unless and until a formal agreement has been executed and delivered.

13. Amendments:

Any amendment to this Agreement shall be agreed in writing by both Parties and shall refer to this Agreement.

14. Severance:

If any term or provision in this Agreement is held to be either illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Agreement, but the validity and enforceability of the remainder of this Agreement shall not be affected.

15. Governing Law:

14.1 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the state of Alaska, without giving effect to its conflict of laws.

14.2 Costs and Attorneys' Fees. In any legal action, arbitration, or other proceeding arising out of this Agreement, the prevailing Party shall be entitled to recover from the other Party all reasonable attorneys' fees and other costs incurred in the proceeding.

16. No waiver. No failure or delay by a party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege.

17. Assignment. Neither party may assign or transfer this Agreement or any of its rights or delegate any of its obligations hereunder whether by operation of State and / or federal law or otherwise to any third party¹ without the prior written consent of the other party; which consent may be withheld for any reason or no reason, except that a party may assign this Agreement without such consent to a successor in interest by way of merger, acquisition, or sale of all or substantially all of that party's assets. The terms of this Agreement shall be binding upon assignees.

18. Survival of Terms. All of the terms and conditions of this Agreement shall survive the termination of the Agreement.

19. General:

19.1. Upon 45 days written notice, the Disclosing Party may audit the use of the programs, materials, marketing materials, services, and such additional disclosed resources. The Receiving Party agrees to co-operate with the Disclosing Party's audit and to provide reasonable assistance and access to information.

- 19.2.** The Receiving Party shall be responsible for its own acts or omissions and for the acts or omissions of its representatives, agents, employees, consultants, contractors, subcontractors, and Affiliates with respect to any Confidential Information whether or not the acts or omissions were authorized or approved by the Receiving Party. The Receiving Party agrees to indemnify the Disclosing Party and to hold the Disclosing Party harmless from and against any loss, damage, or expense (including attorneys' fees) of any kind whatsoever arising in any way directly or indirectly out of any disclosure or use of Confidential Information that is not in compliance with this Agreement.
- 19.3.** The Disclosing Party shall not have any liability to the Receiving Party for any claims made by third parties arising out of their use of the Disclosing Party's trademarks (including "Logo") or marketing materials. The Receiving Party agrees to indemnify the Disclosing Party for any loss, liability, damages, cost or expense (including attorney's fees) arising out of any claims, which may be made against the Disclosing Party arising out of their use of the Logo or marketing materials where such claim relates to their activities, products or services. Notwithstanding above, the Receiving Party shall have no obligation to indemnify the Disclosing Party with respect to a claim of trademark or copyright infringement based upon their use of the Logo or marketing materials, as expressly permitted under this Agreement.
- 19.4.** The Receiving Party shall disclose of any similar agreements explicit or otherwise, for similar purpose/application within its own organization, or any other third party.
- 19.5.** In the event of a breach or threatened breach by the Receiving Party of any provisions of this Agreement, the Disclosing Party, in addition to and not in limitation of any other rights, remedies or damages available to the Disclosing Party at law or in equity, shall be entitled to a temporary restraining order / preliminary injunction in order to prevent or to restrain any such breach by the Receiving Party, or by any or all persons directly or indirectly acting for, on behalf of, or with the Receiving Party.
- 19.6.** To the extent such information is protected from disclosure under federal or state law—including common law and court or administrative orders—and/or from disclosure under the Alaska Public Records Act, it is "*Confidential Information*" under this Agreement regardless of how or even whether it is marked protected. Such information includes: personal information protected under Article 1, Section 22 of the Alaska Constitution; Social Security numbers, bank account numbers, and other information protected under the Alaska Personal Information Protection Act, including by not limited to: network, system and application configuration information; risk assessments, risk mitigations, audits, audit responses and other information security or compliance information.

20. Notices

To be effective, any notice provided under this Agreement shall be in writing and delivered in person or mailed by certified or registered mail, postage prepaid, to the address below or to such other address as the recipient Party has designated in writing and provided in accordance with this Notice provision.

FOR THE CONTRACTOR

NAME:

TITLE:

ADDRESS:

EMAIL:

FOR THE STATE:

NAME:
TITLE:
ADDRESS:
EMAIL:

IN WITNESS WHEREOF, this Agreement was duly executed on behalf of the Parties on the day and year first above written.

For and on behalf of:

State of Alaska – Department of Health and Social Services

Name: _____

Title: _____

SIGNATURE: _____ DATE: _____

AND {Entity}

Name: _____

Title: _____

SIGNATURE: _____ DATE: _____